

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 686

Introduced by Assembly Member Gaines

February 21, 2007

An act to amend Section 707 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 686, as amended, Gaines. Minors: fitness hearing.

Existing law, enacted by initiative statute, establishes the criteria by which the juvenile court may find that certain minors, including a person who has committed one of specified violent offenses when he or she was 16 years of age or older, 2 or more felony offenses under certain circumstances, or specified violent offenses at 14 years of age or older under certain circumstances, are unfit for treatment in juvenile court. Existing law authorizes the district attorney to file an accusatory pleading in a court of criminal jurisdiction against those minors, including, among others, a minor 14 years of age or older who is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in a specified provision. The initiative statute provides that any amendment of its provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

~~This bill would lower the age at which certain minors shall be deemed unfit for treatment in juvenile court from 16 to 14 years of age or older for various violent crimes including, among others, murder, arson, robbery, rape, sodomy, lewd and lascivious acts, oral copulation, kidnapping, attempted murder, and specified assaults. The bill would clarify that the personal use of a firearm during the commission or~~

attempted commission of a felony includes, for purposes of the above provisions, certain felonies that are enumerated in a separate provision. The bill would correct an obsolete cross-reference and make other technical, nonsubstantive changes to those provisions.

Because the bill would amend an initiative statute, it would require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 707 of the Welfare and Institutions Code
2 is amended to read:

3 707. (a) (1) In any case in which a minor is alleged to be a
4 person described in subdivision (a) of Section 602 by reason of
5 the violation, when he or she was 16 years of age or older, of any
6 criminal statute or ordinance except those listed in subdivision (b),
7 upon motion of the petitioner made prior to the attachment of
8 jeopardy the court shall cause the probation officer to investigate
9 and submit a report on the behavioral patterns and social history
10 of the minor being considered for a determination of unfitness.
11 Following submission and consideration of the report, and of any
12 other relevant evidence that the petitioner or the minor may wish
13 to submit, the juvenile court may find that the minor is not a fit
14 and proper subject to be dealt with under the juvenile court law if
15 it concludes that the minor would not be amenable to the care,
16 treatment, and training program available through the facilities of
17 the juvenile court, based upon an evaluation of the following
18 criteria:

19 (A) The degree of criminal sophistication exhibited by the minor.

20 (B) Whether the minor can be rehabilitated prior to the
21 expiration of the juvenile court's jurisdiction.

22 (C) The minor's previous delinquent history.

23 (D) Success of previous attempts by the juvenile court to
24 rehabilitate the minor.

25 (E) The circumstances and gravity of the offense alleged in the
26 petition to have been committed by the minor.

27 A determination that the minor is not a fit and proper subject to
28 be dealt with under the juvenile court law may be based on any
29 one or a combination of the factors set forth above, which shall be

1 recited in the order of unfitness. In any case in which a hearing
2 has been noticed pursuant to this section, the court shall postpone
3 the taking of a plea to the petition until the conclusion of the fitness
4 hearing, and no plea that may already have been entered shall
5 constitute evidence at the hearing.

6 (2) (A) This paragraph shall apply to a minor alleged to be a
7 person described in Section 602 by reason of the violation, when
8 he or she has attained 16 years of age, of any felony offense when
9 the minor has been declared to be a ward of the court pursuant to
10 Section 602 on one or more prior occasions if both of the following
11 apply:

12 ~~(A)~~

13 (i) The minor has previously been found to have committed two
14 or more felony offenses.

15 ~~(B)~~

16 (ii) The offenses upon which the prior petition or petitions were
17 based were committed when the minor had attained 14 years of
18 age.

19 ~~Upon~~

20 (B) *Upon* motion of the petitioner made prior to the attachment
21 of jeopardy the court shall cause the probation officer to investigate
22 and submit a report on the behavioral patterns and social history
23 of the minor being considered for a determination of unfitness.
24 Following submission and consideration of the report, and of any
25 other relevant evidence that the petitioner or the minor may wish
26 to submit, the minor shall be presumed to be not a fit and proper
27 subject to be dealt with under the juvenile court law unless the
28 juvenile court concludes, based upon evidence, which evidence
29 may be of extenuating or mitigating circumstances, that the minor
30 would be amenable to the care, treatment, and training program
31 available through the facilities of the juvenile court based upon an
32 evaluation of the following criteria:

33 (i) The degree of criminal sophistication exhibited by the minor.

34 (ii) Whether the minor can be rehabilitated prior to the expiration
35 of the juvenile court's jurisdiction.

36 (iii) The minor's previous delinquent history.

37 (iv) Success of previous attempts by the juvenile court to
38 rehabilitate the minor.

39 (v) The circumstances and gravity of the offense alleged in the
40 petition to have been committed by the minor.

1 A determination that the minor is a fit and proper subject to be
2 dealt with under the juvenile court law shall be based on a finding
3 of amenability after consideration of the criteria set forth above,
4 and findings ~~therefor~~ *therefore* recited in the order as to each of
5 the above criteria that the minor is fit and proper under each and
6 every one of the above criteria. In making a finding of fitness, the
7 court may consider extenuating and mitigating circumstances in
8 evaluating each of the above criteria. In any case in which the
9 hearing has been noticed pursuant to this section, the court shall
10 postpone the taking of a plea to the petition until the conclusion
11 of the fitness hearing and no plea which may already have been
12 entered shall constitute evidence at the hearing. If the minor is
13 found to be a fit and proper subject to be dealt with under the
14 juvenile court law pursuant to this subdivision, the minor shall be
15 committed to placement in a juvenile hall, ranch camp, forestry
16 camp, boot camp, or secure juvenile home pursuant to Section
17 730, or in any institution operated by the Department of Corrections
18 and Rehabilitation, Division of Juvenile Facilities.

19 (3) If, pursuant to this subdivision, the minor is found to be not
20 a fit and proper subject for juvenile court treatment and is tried in
21 a court of criminal jurisdiction and found guilty by the trier of fact,
22 the judge may commit the minor to the Department of Corrections
23 and Rehabilitation, Division of Juvenile Facilities, in lieu of
24 sentencing the minor to the state prison, unless the limitations
25 specified in Section 1732.6 apply.

26 (b) Subdivision (c) shall be applicable in any case in which a
27 minor is alleged to be a person described in Section 602 by reason
28 of the violation, ~~when he or she was 14 years of age or older~~, of
29 one of the following offenses:

30 (1) Murder.

31 (2) Arson, as provided in subdivision (a) or (b) of Section 451
32 of the Penal Code.

33 (3) Robbery.

34 (4) Rape with force ~~or violence~~, *violence*, or threat of great
35 bodily harm.

36 (5) Sodomy by force, violence, duress, menace, or threat of
37 great bodily harm.

38 (6) Lewd or lascivious act as provided in subdivision (b) of
39 Section 288 of the Penal Code.

1 (7) Oral copulation by force, violence, duress, menace, or threat
2 of great bodily harm.

3 (8) Any offense specified in subdivision (a) of Section 289 of
4 the Penal Code.

5 (9) Kidnapping for ransom.

6 (10) Kidnapping for purpose of robbery.

7 (11) Kidnapping with bodily harm.

8 (12) Attempted murder.

9 (13) Assault with a firearm or destructive device.

10 (14) Assault by any means of force likely to produce great bodily
11 injury.

12 (15) Discharge of a firearm into an inhabited or occupied
13 building.

14 (16) Any offense described in Section 1203.09 of the Penal
15 Code.

16 (17) Any offense described in Section 12022.5 or 12022.53 of
17 the Penal Code.

18 (18) Any felony offense in which the minor personally used a
19 weapon listed in subdivision (a) of Section 12020 of the Penal
20 Code.

21 (19) Any felony offense described in Section 136.1 or 137 of
22 the Penal Code.

23 (20) Manufacturing, compounding, or selling one-half ounce
24 or more of any salt or solution of a controlled substance specified
25 in subdivision (e) of Section 11055 of the Health and Safety Code.

26 (21) Any violent felony, as defined in subdivision (c) of Section
27 667.5 of the Penal Code, which would also constitute a felony
28 violation of subdivision (b) of Section 186.22 of the Penal Code.

29 (22) Escape, by the use of force or violence, from any county
30 juvenile hall, home, ranch, camp, or forestry camp in violation of
31 subdivision (b) of Section 871 where great bodily injury is
32 intentionally inflicted upon an employee of the juvenile facility
33 during the commission of the escape.

34 (23) Torture as described in Sections 206 and 206.1 of the Penal
35 Code.

36 (24) Aggravated mayhem, as described in Section 205 of the
37 Penal Code.

38 (25) Carjacking, as described in Section 215 of the Penal Code,
39 while armed with a dangerous or deadly weapon.

1 (26) Kidnapping for purposes of sexual assault, as punishable
2 in subdivision (b) of Section 209 of the Penal Code.

3 (27) Kidnapping, as punishable in Section 209.5 of the Penal
4 Code.

5 (28) The offense described in subdivision (c) of Section 12034
6 of the Penal Code.

7 (29) The offense described in Section 12308 of the Penal Code.

8 (30) Voluntary manslaughter, as described in subdivision (a)
9 of Section 192 of the Penal Code.

10 (c) With regard to a minor alleged to be a person described in
11 Section 602 by reason of the violation, when he or she was 14
12 years of age or older, of any of the offenses listed in subdivision
13 (b), upon motion of the petitioner made prior to the attachment of
14 jeopardy the court shall cause the probation officer to investigate
15 and submit a report on the behavioral patterns and social history
16 of the minor being considered for a determination of unfitness.
17 Following submission and consideration of the report, and of any
18 other relevant evidence that the petitioner or the minor may wish
19 to submit, the minor shall be presumed to be not a fit and proper
20 subject to be dealt with under the juvenile court law unless the
21 juvenile court concludes, based upon evidence, which evidence
22 may be of extenuating or mitigating circumstances, that the minor
23 would be amenable to the care, treatment, and training program
24 available through the facilities of the juvenile court based upon an
25 evaluation of each of the following criteria:

26 (1) The degree of criminal sophistication exhibited by the minor.

27 (2) Whether the minor can be rehabilitated prior to the expiration
28 of the juvenile court's jurisdiction.

29 (3) The minor's previous delinquent history.

30 (4) Success of previous attempts by the juvenile court to
31 rehabilitate the minor.

32 (5) The circumstances and gravity of the offenses alleged in the
33 petition to have been committed by the minor.

34 A determination that the minor is a fit and proper subject to be
35 dealt with under the juvenile court law shall be based on a finding
36 of amenability after consideration of the criteria set forth above,
37 and findings ~~therefor~~ *therefore* recited in the order as to each of
38 the above criteria that the minor is fit and proper under each and
39 every one of the above criteria. In making a finding of fitness, the
40 court may consider extenuating or mitigating circumstances in

1 evaluating each of the above criteria. In any case in which a hearing
2 has been noticed pursuant to this section, the court shall postpone
3 the taking of a plea to the petition until the conclusion of the fitness
4 hearing and no plea which may already have been entered shall
5 constitute evidence at the hearing. If, pursuant to this subdivision,
6 the minor is found to be not a fit and proper subject for juvenile
7 court treatment and is tried in a court of criminal jurisdiction and
8 found guilty by the trier of fact, the judge may commit the minor
9 to the Department of Corrections and Rehabilitation, Division of
10 Juvenile Facilities, in lieu of sentencing the minor to the state
11 prison, unless the limitations specified in Section 1732.6 apply.

12 (d) (1) Except as provided in subdivision (b) of Section 602,
13 the district attorney or other appropriate prosecuting officer may
14 file an accusatory pleading in a court of criminal jurisdiction
15 against any minor 16 years of age or older who is accused of
16 committing an offense enumerated in subdivision (b).

17 (2) Except as provided in subdivision (b) of Section 602, the
18 district attorney or other appropriate prosecuting officer may file
19 an accusatory pleading against a minor 14 years of age or older in
20 a court of criminal jurisdiction in any case in which any one or
21 more of the following circumstances apply:

22 (A) The minor is alleged to have committed an offense that if
23 committed by an adult would be punishable by death or
24 imprisonment in the state prison for life.

25 (B) The minor is alleged to have personally used a firearm
26 during the commission or attempted commission of a felony, as
27 described in Section 12022.5 or 12022.53 of the Penal Code.

28 (C) The minor is alleged to have committed an offense listed
29 in subdivision (b) in which any one or more of the following
30 circumstances apply:

31 (i) The minor has previously been found to be a person described
32 in Section 602 by reason of the commission of an offense listed
33 in subdivision (b).

34 (ii) The offense was committed for the benefit of, at the direction
35 of, or in association with any criminal street gang, as defined in
36 subdivision (f) of Section 186.22 of the Penal Code, with the
37 specific intent to promote, further, or assist in any criminal conduct
38 by gang members.

39 (iii) The offense was committed for the purpose of intimidating
40 or interfering with any other person's free exercise or enjoyment

1 of any right secured to him or her by the Constitution or laws of
2 this state or by the Constitution or laws of the United States and
3 because of the other person's race, color, religion, ancestry, national
4 origin, disability, gender, or sexual orientation, or because the
5 minor perceives that the other person has one or more of those
6 characteristics, as described in Title 11.6 (commencing with
7 Section 422.6) of Part 1 of the Penal Code.

8 (iv) The victim of the offense was 65 years of age or older, or
9 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
10 or confined to a wheelchair, and that disability was known or
11 reasonably should have been known to the minor at the time of
12 the commission of the offense.

13 (3) Except as provided in subdivision (b) of Section 602, the
14 district attorney or other appropriate prosecuting officer may file
15 an accusatory pleading in a court of criminal jurisdiction against
16 any minor 16 years of age or older who is accused of committing
17 one or more of the following offenses, if the minor has previously
18 been found to be a person described in Section 602 by reason of
19 the violation of any felony offense, when he or she was 14 years
20 of age or older:

21 (A) Any felony offense in which it is alleged that the victim of
22 the offense was 65 years of age or older, or blind, deaf,
23 quadriplegic, paraplegic, developmentally disabled, or confined
24 to a wheelchair, and that disability was known or reasonably should
25 have been known to the minor at the time of the commission of
26 the offense.

27 (B) Any felony offense committed for the purposes of
28 intimidating or interfering with any other person's free exercise
29 or enjoyment of any right secured to him or her by the Constitution
30 or laws of this state or by the Constitution or laws of the United
31 States and because of the other person's race, color, religion,
32 ancestry, national origin, disability, gender, or sexual orientation,
33 or because the minor perceived that the other person had one or
34 more of those characteristics, as described in Title 11.6
35 (commencing with Section 422.6) of Part 1 of the Penal Code.

36 (C) The offense was committed for the benefit of, at the direction
37 of, or in association with any criminal street gang as prohibited by
38 Section 186.22 of the Penal Code.

39 (4) In any case in which the district attorney or other appropriate
40 prosecuting officer has filed an accusatory pleading against a minor

1 in a court of criminal jurisdiction pursuant to this subdivision, the
2 case shall then proceed according to the laws applicable to a
3 criminal case. In conjunction with the preliminary hearing as
4 provided in Section 738 of the Penal Code, the magistrate shall
5 make a finding that reasonable cause exists to believe that the
6 minor comes within this subdivision. If reasonable cause is not
7 established, the criminal court shall transfer the case to the juvenile
8 court having jurisdiction over the matter.

9 (5) For any offense for which the prosecutor may file the
10 accusatory pleading in a court of criminal jurisdiction pursuant to
11 this subdivision, but elects instead to file a petition in the juvenile
12 court, if the minor is subsequently found to be a person described
13 in subdivision (a) of Section 602, the minor shall be committed to
14 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
15 or secure juvenile home pursuant to Section 730, or in any
16 institution operated by the Department of Corrections and
17 Rehabilitation, Division of Juvenile Facilities.

18 (6) If, pursuant to this subdivision, the minor is found to be not
19 a fit and proper subject for juvenile court treatment and is tried in
20 a court of criminal jurisdiction and found guilty by the trier of fact,
21 the judge may commit the minor to the Department of Corrections
22 and Rehabilitation, Division of Juvenile Facilities, in lieu of
23 sentencing the minor to the state prison, unless the limitations
24 specified in Section 1732.6 apply.

25 (e) Any report submitted by a probation officer pursuant to this
26 section regarding the behavioral patterns and social history of the
27 minor being considered for a determination of unfitness shall
28 include any written or oral statement offered by the victim, the
29 victim's parent or guardian if the victim is a minor, or if the victim
30 has died, the victim's next of kin, as authorized by subdivision (b)
31 of Section 656.2. Victims' statements shall be considered by the
32 court to the extent they are relevant to the court's determination
33 of unfitness.